

37 Am. Jur. 2d Fraud and Deceit § 85

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Fraud and Deceit

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IV. False Representations

C. Matters of Futurity; Promises and Statements of Intention

1. In General; Statements as to Events in Future

§ 85. General rule against liability—Illustrative applications

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West's Key Number Digest

West's Key Number Digest, Fraud  27, 28

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False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14

The general rule that statements about the future which turn out to be false do not give rise to liability for fraud¹ generally applies in sales of real² or personal³ property and in trades or exchanges.⁴ Illustrations of the rule are found in decisions holding that fraud cannot be based upon representations concerning the future value, profitability,⁵ or prospects⁶ of a business, such as representations of future insolvency;⁷ representations of the capacity of a corporation to produce product in the future;⁸ or representations as to future prospects of gain,⁹ such as a prediction that corporate stock will triple in value within a year¹⁰ or six months;¹¹ or predictions as to how mining claims will turn out in the matter of yield.¹² It has been said in this regard that forward-looking opinions about investment prospects or future sales performance generally cannot be the basis for a fraud claim.¹³ Also within the class of representations of futurity that will not result in liability are:

- assurances of the outcome or result of litigation¹⁴
- statements or representations that a series of law books, to be published at stated intervals, will be continued so long as another publishing company continues to publish certain of its books¹⁵
- representations that it will take a certain time for a sales agency to “clean up” its present orders¹⁶
- an assurance by an owner of a tract of land, when selling lots thereon restricted to residential purposes, that the whole tract will be so restricted¹⁷

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Footnotes

1 §§ 84, 85.

2 [Ayers v. Southern Pac. R. Co.](#), 173 Cal. 74, 159 P. 144 (1916); [Jobe v. Akowchek](#), 259 A.D.2d 735, 687 N.Y.S.2d 417 (2d Dep’t 1999).

3 [Kennedy v. Flo-Tronics, Inc.](#), 274 Minn. 327, 143 N.W.2d 827 (1966) (corporate stock); [American Law Book Co. v. Fulwiler](#), 219 S.W. 881 (Tex. Civ. App. El Paso 1920).

4 [Nelson v. Van Schaack & Co.](#), 87 Colo. 199, 286 P. 865 (1930); [Brinkley v. Arnold](#), 98 Fla. 166, 123 So. 569 (1929).

5 [Boulden v. Stilwell](#), 100 Md. 543, 60 A. 609 (1905); [Haney v. Parkison](#), 72 Or. 249, 143 P. 926 (1914); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).
As to statements credit, solvency, and financial standing, generally, see §§ 184 to 193.

6 [McCormick v. Jackson](#), 209 N.C. 359, 183 S.E. 369 (1936); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918); [Bushnell v. Elkins](#), 34 Wyo. 495, 245 P. 304, 51 A.L.R. 13 (1926).

7 [Boulden v. Stilwell](#), 100 Md. 543, 60 A. 609 (1905); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).
As to statements regarding credit, solvency, and financial standing, generally, see §§ 184 to 193.

8 [Evans v. Gray](#), 215 So. 2d 40 (Fla. 3d DCA 1968).

9 [Williamson v. Holt](#), 147 N.C. 515, 61 S.E. 384 (1908); [Patterson v. Bushong](#), 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).

10 [Kennedy v. Flo-Tronics, Inc.](#), 274 Minn. 327, 143 N.W.2d 827 (1966).

11 [Sparks v. State](#), 256 So. 2d 537 (Fla. 4th DCA 1972), writ discharged, 273 So. 2d 74 (Fla. 1973).

12 [Burwash v. Ballou](#), 230 Ill. 34, 82 N.E. 355 (1907).

13 [Flegles, Inc. v. TruServ Corp.](#), 289 S.W.3d 544 (Ky. 2009).

14 [Bailey v. Diamond Intern. Corp.](#), 47 A.D.2d 363, 367 N.Y.S.2d 107 (3d Dep’t 1975).

15 [Bigelow v. Barnes](#), 121 Minn. 148, 140 N.W. 1032 (1913).

16 [Lowther v. Hays](#), 225 S.W.2d 708 (Mo. 1950).

17 [Sprague v. Kimball](#), 213 Mass. 380, 100 N.E. 622 (1913).